IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTYETH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 6819 of 2005

Between:

Swastik Vegetable Oil Products Ltd.,

18-2-45/3, Chandrayangutta, Hyderabad,

Rep. by its Director Mr.Satyanarayana Bhangdia,

S/o Late Sri Hukmichand Bhangdia.

..... PETITIONER

AND

1. The State of Andhra Pradesh,

Rep. By its Principal Secretary to Government,

Revenue (C.T.II) Department, Secretariat Buildings,

Hyderabad.

2. The A.P. Sales Tax Appellate Tribunal,

Nampally Road, Hyderabad.

3. The Deputy Commissioner (CT), Charminar

Division, Hyderabad.

..RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ , order or direction, more particularly one in the nature of Writ of Certiorari calling for the records relating to the order of the Sales Tax Appellate Tribunal dated 28-2-2005 in TMP No. 153/2004 in T.A.No.393/2004 set aside the same and direct stay of collection of the tax disputed in the Appeal pending disposal of the Appeal T.A.No. 393/2004 on the file of the Sales Tax Appellate Tribunal, Hyderabad.

Counsel for the Petitioner:MR. T.ANANTHA BABU

Counsel for the Respondents :G.P. FOR COMMERCIAL TAX

The Court made the following :

ORDER: (Per the Hon'ble Sri Justice G.Bikshapathy)

This Writ Petition is filed assailing the order dated 28-2-2005 in TMP No.153/2004 in T.A.No. 393 of 2004 on the file of the Sales Tax Appellate Tribunal, Hyderabad, granting stay of the assessment order, subject to the condition of petitioner depositing a sum of Rs.64,62,180/- within a period of one month.

2. The learned senior counsel Sri T. Anantha Babu appearing for the petitioner vehemently submits that the assessment order itself is illegal and is in gross violation of the principles of natural justice. He submits that even though there is a specific prayer in the explanation to the show cause notice seeking to grant personal hearing, no such opportunity was granted. He also submits that though the petitioner requested the assessing authority to permit him to cross-examine the dealers, whose statements were taken behind his back, this opportunity was also not extended to the petitioner. Therefore, the order passed by the assessing authority is wholly unsustainable. Even though an appeal is filed, the Tribunal has not taken into consideration this aspect and passed a usual order directing the petitioner to deposit the aforesaid amount. Hence, the order of the Tribunal is not sustainable and a blanket stay ought to have been granted by the Tribunal.

3. We have heard the learned Government Pleader appearing for the Respondents.

4. This writ petition has been filed challenging the interim order passed by the Tribunal pending appeal. Under these circumstances, it has to be considered whether the conditions imposed by the Tribunal are reasonable or not.

5. We noticed that the principal contention as referred to above would establish that the main attack is being made on the aspect of proper opportunity, but, we are not inclined to go into the matter as the appellate authority is seized the matter. Keeping in view the facts and circumstances of the case, pending disposal of the appeal by the Andhra Pradesh Sales Tax Appellate Tribunal, there shall be interim stay of recovery of disputed tax on condition of the petitioner depositing Rs.20,00,000/- (Rupees twenty lakhs only) within a period of four weeks from the date of receipt of a copy of this order.

6. Subject to the above direction, the Writ Petition is disposed of. No order as to costs.

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G.Bikshapathy,J.

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P.S.Narayana, J.

30th March, 2005

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To

1. The State of Andhra Pradesh,

Rep. By its Principal Secretary to Government,

Revenue (C.T.II) Department, Secretariat Buildings,

Hyderabad.

2. The A.P. Sales Tax Appellate Tribunal,

Nampally Road, Hyderabad.

3. The Deputy Commissioner (CT), Charminar

Division, Hyderabad.

4. 2 CCs to G.P. for Commercial Tax, High Court Buildings, Hyd.

(OUT)

5. 2 CDs

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and

THE HON'BLE MR JUSTICE P.S.NARAYANA

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WRIT PETITION NO : 6819 of 2005

30th March, 2005.